

Introduced by Senator Lewis

February 23, 1999

An act to amend Sections 646.9 and 646.92 of, and to add Section 3053.3 to, the Penal Code, relating to stalkers.

LEGISLATIVE COUNSEL'S DIGEST

SB 580, as introduced, Lewis. Stalkers.

Under existing law, stalking is a crime. Existing law contains various provisions for the notification of victims of stalkers of release from custody.

This bill would require the court to include the names and related information of victims of stalkers in the abstract of judgment for purposes of notification and prohibition of contact upon release of the stalker.

Existing law requires the Department of Corrections, county sheriff, or director of the local department of corrections to give notice of the release any person who is convicted of stalking or convicted of a felony offense involving domestic violence.

This bill would also require notice of any change in parole status location. It would require additional attempts to locate victims whose address or telephone number is incorrect, or who did not originally request notice. By imposing additional duties on local law enforcement officials, the bill would impose a state-mandated local program.

Existing law provides that, upon the request of the victim, or the victim's parent or legal guardian, the parole authority shall impose various restrictions on contact of victims by persons convicted of certain crimes involving domestic

violence, including stalking. Among other things, the parole authority is required to issue an order prohibiting the parolee from coming within 100 yards of the victim or the victim's residence or workplace.

This bill would enact similar provisions to provide that upon the request of the victim, or the victim's parent or legal guardian, the parole authority shall impose various restrictions on contact of victims by persons convicted of stalking. Among other things, the parole authority would be required to issue an order prohibiting the parolee from coming within 35 miles of the victim or the victim's residence or workplace.

This bill would also require the parole authority to notify local law enforcement when a person convicted of stalking is released within the local jurisdiction.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 646.9 of the Penal Code is
2 amended to read:

3 646.9. (a) Any person who willfully, maliciously, and
4 repeatedly follows or harasses another person and who
5 makes a credible threat with the intent to place that
6 person in reasonable fear for his or her safety, or the safety
7 of his or her immediate family, is guilty of the crime of
8 stalking, punishable by imprisonment in a county jail for
9 not more than one year or by a fine of not more than one

1 thousand dollars (\$1,000), or by both that fine and
2 imprisonment, or by imprisonment in the state prison.

3 (b) Any person who violates subdivision (a) when
4 there is a temporary restraining order, injunction, or any
5 other court order in effect prohibiting the behavior
6 described in subdivision (a) against the same party, shall
7 be punished by imprisonment in the state prison for two,
8 three, or four years.

9 (c) Every person who, having been convicted of a
10 felony under this section, commits a second or subsequent
11 violation of this section shall be punished by
12 imprisonment in the state prison for two, three, or four
13 years.

14 (d) In addition to the penalties provided in this
15 section, the sentencing court may order a person
16 convicted of a felony under this section to register as a sex
17 offender pursuant to subparagraph (E) of paragraph (2)
18 of subdivision (a) of Section 290.

19 (e) For the purposes of this section, “harasses” means
20 a knowing and willful course of conduct directed at a
21 specific person that seriously alarms, annoys, torments, or
22 terrorizes the person, and that serves no legitimate
23 purpose. This course of conduct must be such as would
24 cause a reasonable person to suffer substantial emotional
25 distress, and must actually cause substantial emotional
26 distress to the person.

27 (f) For purposes of this section, “course of conduct”
28 means a pattern of conduct composed of a series of acts
29 over a period of time, however short, evidencing a
30 continuity of purpose. Constitutionally protected activity
31 is not included within the meaning of “course of
32 conduct.”

33 (g) For the purposes of this section, “credible threat”
34 means a verbal or written threat, including that
35 performed through the use of an electronic
36 communication device, or a threat implied by a pattern
37 of conduct or a combination of verbal, written, or
38 electronically communicated statements and conduct
39 made with the intent to place the person that is the target
40 of the threat in reasonable fear for his or her safety or the



1 safety of his or her family and made with the apparent
2 ability to carry out the threat so as to cause the person who
3 is the target of the threat to reasonably fear for his or her
4 safety or the safety of his or her family. It is not necessary
5 to prove that the defendant had the intent to actually
6 carry out the threat. The present incarceration of a
7 person making the threat shall not be a bar to prosecution
8 under this section.

9 (h) For purposes of this section, the term “electronic
10 communication device” includes, but is not limited to,
11 telephones, cellular phones, computers, video recorders,
12 fax machines, or pagers. “Electronic communication” has
13 the same meaning as the term defined in Subsection 12
14 of Section 2510 of Title 18 of the United States Code.

15 (i) This section shall not apply to conduct that occurs
16 during labor picketing.

17 (j) If probation is granted, or the execution or
18 imposition of a sentence is suspended, for any person
19 convicted under this section, it shall be a condition of
20 probation that the person participate in counseling, as
21 designated by the court. However, the court, upon a
22 showing of good cause, may find that the counseling
23 requirement shall not be imposed.

24 (k) The sentencing court also shall consider issuing an
25 order restraining the defendant from any contact with
26 the victim, that may be valid for up to 10 years, as
27 determined by the court. It is the intent of the Legislature
28 that the length of any restraining order be based upon the
29 seriousness of the facts before the court, the probability
30 of future violations, and the safety of the victim and his or
31 her immediate family.

32 (l) For purposes of this section, “immediate family”
33 means any spouse, parent, child, any person related by
34 consanguinity or affinity within the second degree, or any
35 other person who regularly resides in the household, or
36 who, within the prior six months, regularly resided in the
37 household.

38 (m) The court shall consider whether the defendant
39 would benefit from treatment pursuant to Section 2684.
40 If it is determined to be appropriate, the court shall

1 recommend that the Department of Corrections make a
2 certification as provided in Section 2684. Upon the
3 certification, the defendant shall be evaluated and
4 transferred to the appropriate hospital for treatment
5 pursuant to Section 2684.

6 *(n) In order to permit the identification of and contact*
7 *with victims in the future for purposes of notification and*
8 *prohibition of contact under Sections 646.92 and 3053.3,*
9 *the court shall identify the victims of the offense in the*
10 *abstract of judgment and shall include information, such*
11 *as the victim's address and telephone number, to permit*
12 *contacting the victim.*

13 SEC. 2. Section 646.92 of the Penal Code is amended
14 to read:

15 646.92. (a) The Department of Corrections, county
16 sheriff, or director of the local department of corrections
17 shall give notice not less than 15 days prior to the release
18 from the state prison or a county jail of any person who
19 is convicted of violating Section 646.9 or convicted of a
20 felony offense involving domestic violence, as defined in
21 Section 6211 of the Family Code, *or any change in the*
22 *parole status or parole location of the convicted person,*
23 *to any person the court identifies as a victim of the*
24 *offense, a family member of the victim, or a witness to the*
25 *offense by telephone and certified mail at his or her last*
26 *known address, upon request. A victim, family member,*
27 *or witness shall keep the Department of Corrections or*
28 *county sheriff informed of his or her current mailing*
29 *address and telephone number to be entitled to receive*
30 *notice. A victim may designate another person for the*
31 *purpose of receiving notification. The Department of*
32 *Corrections, county sheriff, or director of the local*
33 *department of corrections, shall make all reasonable*
34 *attempts to locate a person who has requested*
35 *notification but whose address and telephone number are*
36 *incorrect or not current. However, the duty to keep the*
37 *Department of Corrections or county sheriff informed of*
38 *a current mailing address and telephone number shall*
39 *remain with the victim.*

1 *In the event the victim had not originally requested*
2 *notification under this section, the Department of*
3 *Corrections, county sheriff, or director of the local*
4 *department of corrections, as appropriate, shall make an*
5 *attempt to contact the victim or, if the victim is a minor,*
6 *the parent or guardian of the victim, of the victim's right*
7 *to notification under this section.*

8 (b) All information relating to any person who
9 receives notice under this section shall remain
10 confidential and shall not be made available to the person
11 convicted of violating this section.

12 (c) For purposes of this section, “release” includes a
13 release from the state prison or a county jail because time
14 has been served, a release from the state prison or a
15 county jail to parole or probation supervision, or an
16 escape from an institution or reentry facility.

17 (d) The Department of Corrections or county sheriff
18 shall give notice of an escape from an institution or
19 reentry facility of any person convicted of violating
20 Section 646.9 or convicted of a felony offense involving
21 domestic violence, as defined in Section 6211 of the
22 Family Code, to the notice recipients described in
23 subdivision (a).

24 (e) Substantial compliance satisfies the notification
25 requirements of subdivision (a).

26 SEC. 3. Section 3053.3 is added to the Penal Code, to
27 read:

28 3053.3. (a) Upon the request of the victim, or the
29 victim's parent or legal guardian if the victim is a minor,
30 the parole authority shall impose compliance with a
31 protective order imposing any or all of the following
32 conditions on the parole of a person released from prison
33 for an offense involving stalking:

34 (1) Compliance with a protective order enjoining the
35 parolee from threatening, stalking, or harassing the
36 victim.

37 (2) An order prohibiting the parolee from having
38 personal, telephonic, electronic, media, or written
39 contact with the victim.

1 (3) An order prohibiting the parolee from coming
2 within at least 35 miles of the victim or the victim's
3 residence or workplace.

4 (b) The parole authority shall notify the local law
5 enforcement officials when any person convicted of an
6 offense described in subdivision (a) is released within the
7 jurisdiction of the official, including the name and contact
8 information concerning the victim.

9 SEC. 4. Notwithstanding Section 17610 of the
10 Government Code, if the Commission on State Mandates
11 determines that this act contains costs mandated by the
12 state, reimbursement to local agencies and school
13 districts for those costs shall be made pursuant to Part 7
14 (commencing with Section 17500) of Division 4 of Title
15 2 of the Government Code. If the statewide cost of the
16 claim for reimbursement does not exceed one million
17 dollars (\$1,000,000), reimbursement shall be made from
18 the State Mandates Claims Fund.

